IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1905 OF 2005

Shri Shrikant R.Dubey .. Petitioner.

V/s.

1. Raje Shivaji Education Institution, Khade Golivilli, Kalyan (E) and others. .. Respondents.

Mr. J.P.Daiya with G.H.Keluskar for the Petitioner.

Mr.A.A.Garge for the Respondent Nos. 1 to 6.

CORAM : R.M. SAVANT, J.

DATED : 04th JUNE, 2007.

P.C.:

. This petition takes exception to the order dated 24.02.2005 passed by the Assistant Charity Commissioner, Thane Region, Thane, by which order the amendment application at Exh. 67 filed by the Reporting Trustee i.e. the Respondent No.2 in the change report proceedings came to be allowed.

2. The dispute arises in a proceeding under section 22 of the Bombay Public Trusts Act, 1950. The Respondent No.2 filed a change report for deleting the name of B.S.Rai, as a Secretary of the Trust in question. In the said change report certain allegations

regarding misappropriation of the trust funds by the said B.S.Rai were made. The said amendment application came to be filed by the respondent No.2 on the basis of the settlement arrived at between the parties. The settlement has been justified on the ground that the same was arrived at in the interest of the school and the students who are getting education in the school run by the trust in question. The said amendment application as indicated above came to be allowed by the impugned order.

3. I have heard Shri Daiya, Advocate for the Petitioner and Shri Garge, Advocate for the Respondents 1 to 6. Mr. Daiya contends that the amendment application was not backed by the proper resolution of the Trust in question and the same was therefore, not maintainable. He contends that a compromise was arrived at out of court between the contesting respondent and the said B.S.Rai. The implementation of the said settlement can only be with the consent of the trust after the trust passes a resolution in that behalf.

4. Shri Garge on the other hand contends that the allegation of misappropriation of the funds etc., on which much store has been laid by the learned counsel for the petitioner, can be dealt with appropriately in

an application filed under section 41-A, vide application No. 10/01 filed by the petitioner herein as also by resort to the provisions of section 41-D of the Bombay Public Trusts Act. The Assistant Charity Commissioner has also allowed the amendment application and rejected the contention on behalf of the petitioner on the said ground.

5. What is pertinent to note is that the instant case is as regards the change report filed under section 22 and not a proceedings for removal of a trustee on the ground of misconduct or misbehaviour. If the petitioner is aggrieved by the actions of the said B.S.Rai as a Secretary of the Trust or wants to proceed in respect of the allegations of misappropriation of funds etc. he may adopt appropriate proceedings under the Bombay Public Trust Act. In that view of the matter, no interference is called for under Article 227 of the Constitution. The petition is accordingly dismissed.

(R.M.SAVANT,J.)

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